UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RONALD J. MILLER, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	**Civil Action No. 12-1715**
v.	)	**CLASS ACTION**
TRANS UNION, LLC,	)	
Defendant.	)	

PLAINTIFF'S MOTION TO EXCLUDE DECLARATION OF VICTOR STANGO

AND NOW, upon consideration of Plaintiff's Motion to Exclude Declaration of Victor Stango (the "Motion"), and Defendant's response thereto, and good cause appearing therefore,

IT IS, this ____ day of ____________, 2015, HEREBY ORDERED that the Motion is GRANTED.

____
WILLIAM J. NEALON, U.S.D.J.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RONALD J. MILLER, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	**Civil Action No. 12-1715**
v.	)	**CLASS ACTION**
TRANS UNION, LLC,	)	
Defendant.	)	

PLAINTIFF'S MOTION TO EXCLUDE DECLARATION OF VICTOR STANGO

Plaintiff Ronald J. Miller, by counsel, pursuant to Rule 37 of the Federal Rules of Civil Procedure, hereby requests an order excluding the Declaration of Victor Stango attached to Defendant Trans Union, LLC's Opposition to Plaintiff's Motion for Class Certification (Docs. 85-86) from evidence in this matter. The reasons for the request are set forth in the accompanying Memorandum of Law, which is incorporated herein by reference.

Dated: February 17, 2015

Respectfully submitted,

FRANCIS & MAILMAN, P.C.

By: */s/ John Soumilas*
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RONALD J. MILLER, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	**Civil Action No. 12-1715**
v.	)	**CLASS ACTION**
TRANS UNION, LLC,	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION TO EXCLUDE DECLARATION OF VICTOR STANGO

Plaintiff Ronald J. Miller, by counsel, hereby moves pursuant to Rule 37 of the Federal Rules of Civil Procedure for an order excluding the Declaration of Victor Stango from consideration in this matter.

I. BACKGROUND

Defendant Trans Union, LLC (Trans Union) has opposed Plaintiff's Motion for Class Certification in part based upon a Declaration of Victor Stango (Doc. 85) (Stango Declaration). Because Trans Union failed to disclose this expert or produce a copy of his declaration prior to the close of discovery related to class certification in this matter, substantially prejudicing Plaintiff, the Stango Declaration should be excluded from consideration.

The deadline to complete discovery related to class certification in this case, after being extended twice, was November 28, 2014 (Docs. 72, 74). Trans Union did not disclose the identity of any expert witnesses prior to that date, or produce any declarations or reports by any experts. Nevertheless, when Trans Union filed its opposition to Plaintiff's Motion for Class Certification on January 26, 2015, it referenced and attached a declaration by purported expert Victor Stango, also dated January 26, 2015. Doc. 85, Stango Decl. at p. 30. Trans Union did not revise its initial disclosures to include reference to Mr. Stango until February 10, 2015. Prior to the filing of the Stango Declaration, Plaintiff was unaware that Trans Union intended to use an expert in connection with class certification briefing and has had no opportunity to take any discovery regarding Mr. Stango or take Mr. Stango's deposition.

II. ARGUMENT

In order for an expert report to be properly before a court, the identity of the expert and the contents of the report must be disclosed in accordance with the deadlines set by the court. Fed. R. Civ. P. 26(a)(2)(D). Rule 37 of the Federal Rules of Civil Procedure authorizes the district court to enforce discovery orders by "prohibiting a party that fails to comply from introducing designated matters into evidence." Fed. R. Civ. P. 37(b)(2)(B). Failure to timely disclose the identity of an expert and/or the expert's report is grounds for excluding the report. *See Bailey v. Viacom Inc.*, 435 Fed. App'x 85, 89 (3d Cir. 2011) (excluding undisclosed expert report because the party seeking to use the expert "had ample opportunity during discovery to disclose … an expert but consistently neglected to do so."); *Haines v. Davies*, No. 1:07-cv-851, 2009 WL 331433, at *3-4 (M.D. Pa. Feb. 9, 2012) (precluding introduction of expert witness for failure to timely disclose the report of the expert *Dow Chemical Canada Inc. v. HRD Corp.*, 909 F. Supp. 2d 340, 343 (D. Delaware 2012) (finding that submission of expert report after discovery deadline improperly circumvented the court's schedule and prejudiced the opposing party by denying opportunity to confront the expert on contents of the declaration).

The Third Circuit also requires that the Court consider four factors before prohibiting evidence: "(1) the prejudice or surprise of the party against whom the excluded evidence would have been admitted; (2) the ability of the party to cure that prejudice; (3) the extent to which allowing the evidence would disrupt the orderly and efficient trial of the case or other cases in the court; and (4) bad faith or willfulness in failing to comply with a court order or discovery obligation." *Nicholas v. Pennsylvania State University*, 227 F.3d 133, 148 (3d Cir. 2000).

Here, Trans Union had ample opportunity during the time period set aside for discovery related to class certification to disclose the identity of its proposed expert Mr. Stango and any report prepared by Mr. Stango that it intended to use regarding class certification in this matter. Because Trans Union failed to do so within the time allotted, Plaintiff was unfairly surprised by Trans Union's use of expert testimony to oppose class certification and was further denied the opportunity to confront Mr. Stango about the contents of the report through taking his deposition. Trans Union's late disclosure cannot be cured absent significant disruption of the orderly resolution of class certification proceedings in this matter. Therefore, the Stango Declaration should be excluded from consideration.

III. CONCLUSION

For all the above reasons, Plaintiff respectfully requests that this Court exclude the Stango Declaration from evidence in this matter and from consideration upon Plaintiff's Motion for Class Certification.

Dated: February 17, 2015

Respectfully submitted,

FRANCIS & MAILMAN, P.C.

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CERTIFICATE OF SERVICE

I do hereby certify that on the date below, I caused a true and correct copy of the foregoing to be filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's EM/ECF System.

Date: February 17, 2015

/s/ John Soumilas
JOHN SOUMILAS